

REMARKS

Claims 40-48 were acted upon in the aforesaid Office Action. Claims 41, 42, 45 and 47 are cancelled herein. New claims 49-55 have been added, leaving claims 40, 43, 44 and 48-55 for consideration.

Amended claim 40 constitutes a combination of old claims 40 (as amended herein) and 47 (also re-worded).

Old claim 40 was rejected under 35 U.S.C. 101 as being directed to nonstatutory subject matter, claim 40 being held to describe naturally occurring combinations of matter. New claim 40 has been limited to "the scaffold horizontal layers of melt extrusion materials comprising at least one of PCL and PCL/HA, formed with an FDM 3P Modeler rapid prototyping system operating in X, Y and Z axes; wherein the orientation of the walls is in a lay-down pattern forming triangles in a horizontal layer.

Claim 40 has been further amended to limit the scaffold structure to being formed of a plurality of horizontal layers of "melt extrusion materials", which are believed to not be a product of nature.

The old claim 47 matter herein added to claim 40 limits the orientation of the walls to a lay-down pattern forming triangles in a horizontal layer.

It appears, then, that amended claim 40 describes more than merely naturally occurring configurations of matter.

The rejection of claims 41-48 "as being dependent on a rejected claim" is not fully understood inasmuch as claims depending from a rejected claim are often found allowable, based upon the matter in the dependent claim. However, in this

particular case, wherein the claims have been extensively amended such rejection probably is not critical.

Claim 40 stands further rejected under 35 U.S.C. 112 as failing to comply with the written description requirement.

Examiner has noted that a particular species of the claimed genus is described and quotes the language relating thereto. Claim 40 has been amended to include the language noted by Examiner on page 48 of the specification. It appears that amended claim 40 now sets forth the invention in sufficient detail and particularly to pass muster.

Claim 40 stands further rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the invention. More particularly, it has been held unclear as to the meaning of the numerical degree elements recited in claim 40. Claim 40 has been amended to limit the lay-down patterns to "horizontally disposed triangles". Thus, it has been made clear that the intersecting linear compartments are disposed in a horizontal plane and intersect so as to form triangles.

Claim 40 stands further rejected under 35 U.S.C. 102 as anticipated by USP 5,518,680 - Cima et al. By amendment herein, the matter of old claim 47 has been included in amended claim 40, though the wording has been changed from specifying the points of triangles to simply "triangles". Old claim 47 was not rejected on the basis of Cima and would appear to render amended claim 40 clear of the teachings of Cima.

Claim 40 stands similarly rejected under 35 U.S.C. 102 as anticipated by USP 6,280,478 - Richter et al. Old claim 47 was not so rejected and its content has been added to claim 40 which

would appear to render amended claim 40 clear of the teachings of Richter.

Claims 43 and 44 depend from amended claim 40 and would appear to be allowable, at least through dependency.

Claim 48, which depended from claim 45 has been amended to provide an independent claim similar to independent claim 40, but limited to the orientation of the walls being such as to provide a lay-down pattern forming five-sided polygons. Claim 48 was not rejected on the basis of prior art and is believed to have been amended in such a manner as to overcome the 35 U.S.C. 101 and 112 rejections.

New claims 49 and 50 depend respectively, from claims 40 and 48 and should be deemed allowable, at least through dependency.

Similarly, claims 51 and 52 depend, respectively, from claim 40.

Claims 51 and 53 further limit the scaffold structure to horizontal layers of the structure fabricated with different lay-down patterns.

In the specification, the Trademarks noted by Examiner have been capitalized. In each instance noted, the capitalized words appear to be either corporate names or the generic terminology is already present.

New claim 55 depends from claim 54 and adds the same matter as appears in old claims 43 and 54.

It is believed that claims 40, 43, 44, 46 and 48-55 are now in condition for allowance, which is most respectfully requested.

In the event that any fees may be required in this matter,  
please charge the same to Deposit Account No. 16-0221.

Thank you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott R. Foster".

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